



February 16, 2000

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2000-0557

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#132357.

The Medicaid Fraud Control Unit of the Office of the Attorney General (the "MFCU") received a request for information related to dentists engaging in Medicaid fraud. Specifically, the requestor seeks:

- 1) Any and all written consumer complaints or inter-agency referrals handled by the [MFCU] relating to dentists engaging in Medicaid fraud, received between Jan. 1, 1998 and Dec. 1, 1999[;]
- 2) Any and all logs, transcripts, or documentation concerning consumer phone calls to the toll-free Medicaid fraud reporting hotline relating to dentists engaging in Medicaid fraud, received between Jan. 1, 1998 and Dec. 1, 1999[;]
- 3) Any and all documents relating to completed investigations initiated by the [MFCU] against dentists suspected of Medicaid Fraud . . . concluded between Jan. 1, 1998 and Dec. 1, 1999[; and]
- 4) Any and all documents relating to [a particular] Texas Medicaid dental provider.

You inform our office that because the MFCU does not maintain a toll-free Medicaid fraud reporting hotline, you are unable to provide information responsive to category 2 of the request. You claim, however, that the information responsive to categories, 1, 3, and 4 is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample of information.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You explain that the MFCU is charged by federal law to conduct “a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program,” and reviewing “abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan.” *See* 42 C.F.R. § 1007.11. You further explain that the documents responsive to categories 1 and 4 of the request pertain to four open and pending criminal investigations. Accordingly, we find that the requested information is information held by a law enforcement agency, and that the release of the documents responsive to categories 1 and 4 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the MFCU may withhold the information responsive to categories 1 and 4 under section 552.108(a)(1).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You inform us that the documents responsive to category 3 pertain to three completed investigations. You explain that two of these investigations were closed due to insufficient evidence, and the other was closed after all obligations were completed. You further inform us that the cases did not result in convictions or deferred adjudications. Because these concluded investigations did not result in convictions or deferred adjudications, we find that section 552.108(a)(2) is applicable. Therefore, the MFCU may withhold from disclosure the documents responsive to category 3 based on section 552.108(a)(2).

We note, however, that section 552.108 does not apply to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information is considered to

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

be information held as public in *Houston Chronicle Publishing Co. v. City of Houston*. See Open Records Decision No. 127 (1976). Therefore, you must release basic information to the requestor.² Because we find that you may withhold the requested information under section 552.108 of the Government Code, we do not address your other claims for exception.³

We also note that the submitted information contains a civil petition. You inform our office that you do not know whether the petition has been filed with a court. Information that is contained in a public court record is not excepted from required disclosure unless it is expressly confidential under other law. See Gov't Code § 552.002(a)(17); see also *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Therefore, if the petition has in fact been filed with a court, you must release the petition to the requestor unless it is expressly made confidential by other law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

²If, however, the complainants whose names must be released as basic information under *Houston Chronicle* are Medicaid recipients, you are *required* to withhold information that could identify their status as Medicaid recipients because release here is not for the administration of the assistance programs. See 42 C.F.R. § 1007.11(f); Hum. Res. Code §§ 12.003, 21.012; Open Records Decision Nos. 584 (1991), 166 (1977). Moreover, we caution that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

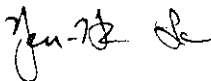
³Generally, basic information is not excepted from public disclosure under section 552.103. Open Records Decision No. 362 (1983)

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/KSK/ljp

Ref: ID#132357

Encl. Submitted documents

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